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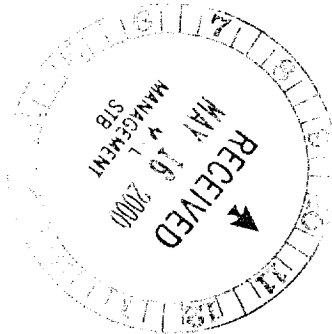
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May 15, 2000

by UPS overnight mail

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, DC 20423-0001



CHIEF OF STAFF
MAY 16 2000
STB

Re: STB Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures*

Dear Mr. Secretary or Representative:

Enclosed please find an original and 25 copies of Comments, for filing with the Board in the above referenced matter.

Twenty-five copies accompany the original of this notice of intent to participate. Also enclosed is a 3.5-inch IBM-compatible floppy diskette (in Word Perfect 7.0 format), providing an electronic copy of these Comments.

Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Iowa Traction Railroad Company

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cc: David K. Johnson

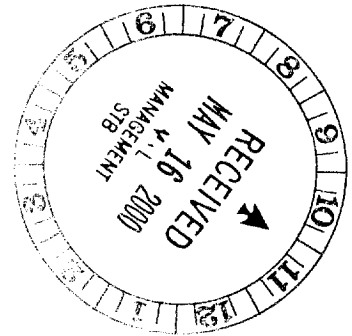
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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

MAJOR RAIL CONSOLIDATION
PROCEDURES

) EX PARTE NO. 582
) (SUB-NO. 1)



COMMENTS

RECEIVED
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Secretary

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Public Record

IOWA TRACTION RAILROAD COMPANY
P.O. Box 309
Mason City, IA 50402-0309

Commentor

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Attorney for Commentor

DUE DATE: May 16, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

MAJOR RAIL CONSOLIDATION)	EX PARTE NO. 582
PROCEDURES)	(SUB-NO. 1)

COMMENTS

Pursuant to the procedural decision in this proceeding served March 31, 2000, IOWA TRACTION RAILROAD COMPANY (IATR) hereby submits comments in response to the Board's Advance Notice of Proposed Rulemaking (ANPR) on modification of regulations governing proposals for major rail consolidations.

IDENTITY AND INTEREST OF COMMENTOR

IATR is a Class 3 rail carrier who operates approximately 10.4 miles of rail line in Mason City, IA and between Mason City and Clear Lake, IA. It has connections with Union Pacific Railroad Company (UP) and I&M Rail Link (IMRL).

As a result of providing high quality rail service to its shippers and the availability of two competitive rail connections, IATR has markedly increased the volume of rail traffic that it handles since its inception as a rail carrier in 1987. However, IATR is seriously concerned that its rail traffic may erode substantially, threatening its continued existence, as a result of continuing major rail consolidations which reduce rail competition. Consequently, IATR has decided to participate in this proceeding.

COMMENTS

IATR's financial viability depends on continuing to have two competitive rail connections. Recent events suggest that the continuation of such competition may be in jeopardy.

When the proposed consolidation of the Burlington Northern and Santa Fe Railway Company (BNSF) and the Canadian National Rail System (CN) was announced late last year, one of the competitive responses of Union Pacific Railroad Company (UP) was going to be acquisition of a significant stock ownership in IMRL. That would have eliminated IMRL's motivation to effectively compete with UP at Mason City and elsewhere. The practical effect of that would have been a very detrimental loss of a competitive connection for IATR, and loss of competitive rail service for Mason City area shippers. In IATR's view, that would have been very much contrary to the public interest. The merger moratorium sidetracked that action, but amendment of the merger regulations is needed to prevent it from recurring in the future.

It is difficult or impossible to fashion conditions to protect short-line rail carriers where the harm to such carriers is likely to result from another carrier's competitive response to a merger proposal, rather than from the merger proposal itself. If a proposed merger would not have a direct effect on a short-line rail carrier, but the likely downstream effect would be to destroy that carrier's financial viability, that downstream effect should militate against approval of the proposed merger. The merger regulations should be amended accordingly.

The Board should also be vigilant to protect the interests of short-line rail carriers when their viability would be threatened directly by a proposed merger. There should be extensive use of the Board's conditioning power in rail merger cases to ensure that short-line rail carriers retain competitive connections with at least two independent rail carriers. That should be done through

aggressive use of divestiture and trackage rights for independent rail carriers as conditions to merger approval. The governing statute, 49 U.S.C. § 11324(c), specifically contemplates such action, *viz.*

The Board may impose conditions governing the transactions, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities.

IATR also strongly supports amended merger regulations that would require applicants to submit plans for promoting the viability of existing regional and shortline rail carriers, based on the “Bill of Rights” advocated by the American Short Line and Regional Railroad Association (*see* ANPR, at 6). It would be strongly in the public interest if shortline rail carriers had the right to interchange and routing freedom, the right to competitive and nondiscriminatory pricing, the right to fair and nondiscriminatory car supply, and the right to compensation for service failures. There has been substantial harm to shortline railroads from anticompetitive behavior by major rail carriers. The merger regulations should be amended in a manner to begin to undo that harm.

Inasmuch as a lot of current anticompetitive behavior of Class I rail carriers was made possible by past mergers, there should be regulations that allow affected parties to easily and inexpensively reopen prior merger proceedings to redress such wrongs. IATR is experiencing such a situation in Mason City, IA. The Chicago & North Western Railway (C&NW), a predecessor of Union Pacific Railroad Company (UP), merged the Minneapolis & St. Louis Railroad (M&St.L) into it. Thereafter, IATR used offer-of-financial-assistance (OFA) procedures to acquire former M&St.L trackage in Mason City that C&NW was authorized to abandon. That trackage is separated from other IATR trackage by 2.2 miles of rail line that continued to be owned by C&NW (now UP). Although C&NW had no use for that 2.2 miles of rail line, C&NW

refused to sell that trackage to IATR or to allow IATR to operate over that trackage. UP continues to refuse IATR to connect its tracks by acquiring or operating over that 2.2-mile gap. The motive of C&NW and UP in that respect is to prevent IATR from competing by means of use of that trackage. IATR ought to be able to reopen the C&NW-M&ST.L merger case or the UP-CN&W merger case to allow that anticompetitive behavior to be reviewed.

The regulations should provide for remedies when a merger would lead to abandonment of excess rail lines. For affected shippers, the remedy should be based on what would be required to provide it with equivalent rail service, e.g., increased cost of trucking, transloading and excess inventory costs. Where the abandonment would drive a single interconnecting shortline railroad out of business, the remedy should consider loss of employment in the area, the shortline's lost profits and the loss of economic development potential for affected communities.

Mergers can seriously harm shortline railroads while stifling rail competition. Healthy rail competition results when a shortline rail carrier allows its local shippers to route traffic via two or more of the shortline's connecting rail carriers. A case in point is the Associated Grain Producers' (AGP) plant in Mason City. That plant formerly was served solely by C&NW (now UP). IATR constructed trackage into that plant. Now AGP can route its traffic via UP or via IATR-IMRL. AGP has let it be known that its rates and service are greatly improved as a result of competitive rail service. As noted, affiliation between UP and IMRL as a competitive response to a BNSF-CN affiliation would seriously harm IATR and shippers who have benefitted from IATR's presence in Mason City.

The situation is even worse where a shortline rail carrier connects with two Class I rail carriers who are merging, one of which directly serves the shippers served by the shortline. The

likelihood is great that the shortline rail carrier would not be used after the merger. Shippers would lose the benefit of competitive routing, resulting in increased rates. Where the short-line has developed a large volume of traffic in connection with the Class I rail carrier that does not serve shippers directly, the loss of such traffic can force the shortline to file for abandonment (perhaps not being able to afford the filing fee). That would definitely not be in the public interest.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should take the foregoing comments into account in formulating proposed regulations on major rail consolidations.

Respectfully submitted,

IOWA TRACTION RAILROAD COMPANY
P.O. Box 309
Mason City, IA 50402-0309

Commentor

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(312) 236-0204

Attorney for Commentor

DUE DATE: May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2000, I served the foregoing document, Comments, by first-class, U.S. mail, postage prepaid, on all parties of record appearing in the Board's official service list.

Thomas F. McFarland Jr.

Thomas F. McFarland, Jr.